

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. CR 17-0175 CRB
)
LEN TURNER and LANCE TURNER,)
) San Francisco, California
Defendants.) Tuesday
) August 21, 2018
) 9:00 a.m.

EXCERPT OF JURY TRIAL PROCEEDINGS
TESTIMONY OF LAURA CROSBY

APPEARANCES:

For Plaintiff: ALEX TSE
Acting United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: KIMBERLY HOPKINS
ANDREW DAWSON
ASSISTANT UNITED STATES ATTORNEYS

For Defendant RIORDAN & HORGAN
Len Turner: 523 Octavia Street
San Francisco, California 94102
BY: DENNIS RIORDAN, ESQ.

For Defendant BOERSCH SHAPIRO, LLP
Lance Turner: 1611 Telegraph Avenue
Suite 806
Oakland, California 94612
BY: MARTHA BOERSCH, ESQ.

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR

Official Reporter - US District Court

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Tuesday - August 21, 2018

10:00 a.m.

P R O C E E D I N G S

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(Prior proceedings held herein, reported
but not transcribed.)

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THE COURT: Call your next witness.

LAURA CROSBY,

called as a witness for the Government, having been duly sworn,
testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you please be seated.

Please state your full name for the record and spell your
last name, and use the microphone.

THE WITNESS: Sure.

Good morning. My name is Laura Boris Crosby. My last
name is C-R-O-S-B-Y.

DIRECT EXAMINATION

BY MR. DAWSON

Q. Good morning, Ms. Crosby.

A. Good morning.

Q. To just ask, we have a court reporter here and we have had
a lot of fast talkers this morning. So if you could be sure to
speak as slowly and clearly as you can. I'll try and do the
same.

1 A. Okay. I will do my best.

2 Q. Ms. Crosby, where do you work?

3 A. I work at the Lawrence Berkeley National Laboratory.

4 Q. What is the Lawrence Berkeley National Laboratory?

5 A. The Berkeley laboratory, we commonly call it Berkeley Lab
6 instead of Lawrence Berkeley National Laboratory, because
7 that's really long.

8 The Berkeley Laboratory is a science lab. We are a
9 research laboratory and we're run by the University of
10 California, but our primary mission is to conduct scientific
11 research in a lot of different areas.

12 Q. And who primarily funds the Lawrence Berkeley National
13 Laboratory?

14 A. Our primary funder is the federal government. It's the
15 U.S. government through -- so the Government has many branches;
16 right? So ours is through the Department of Energy.

17 Q. What kind of work does the Berkeley Lab do?

18 A. Lawrence Berkeley National Laboratory is diverse in the
19 type of science it does. So we have scientists that focus on
20 probably 20 different areas, and I won't list all 20, but, for
21 example, we have researchers that will do genomics research for
22 fighting cancer.

23 But we're very diverse, so we also have people that run
24 our super computer. So we have a massive super computer.
25 There are about ten of them in the world. Our scientists will

1 run that computer and other people will want to use it. So we
2 do super computer research.

3 And just also, by way of example, we have researchers that
4 do alternative energy. So if we need to find diverse fuel
5 instead of using fossil-based fuels, like gas or oil, our
6 researchers will look for bio-based fuels, plants material,
7 things like that.

8 So we're a very diverse science laboratory.

9 **Q.** And what kind of work do you personally do at the lab?

10 **A.** I'm not a scientist. I am a contracting officer. So my
11 title is actually a subcontract manager. And the reason is
12 we're -- all the contracts I issue are sub to our prime
13 contract with the federal government, but essentially I'm a
14 contracting officer in the federal arena. That would be my
15 title.

16 I write contracts. I review contracts. And I have a team
17 right now of ten employees that write and issue contracts. My
18 focus primarily is on design and construction contracts.

19 **Q.** And is the field that you work in sometimes also known as
20 procurement?

21 **A.** Yes.

22 **Q.** If you could give a brief definition of what, in your
23 view, an experienced procurement is?

24 **A.** Sure. Actually, our department is called procurement.
25 We're the procurement department.

1 And what we do in procurement, really briefly, is we look
2 for people or companies that can give us the goods or the
3 services that we need. So imagine if you're going to renovate
4 this building here and you might need wood paneling. We would
5 search for suppliers for that wood, but also the company that
6 would build it out and renovate it. The team that I manage
7 does just that.

8 We also hire the design professionals that do the design
9 for the space and then the construction companies that build it
10 out.

11 But our department, and procurement in general, is that
12 process. It's finding people that do the sources -- that do
13 the work, sourcing it, issuing them a contract and awarding
14 that contract.

15 **Q.** And where is the Berkeley Lab located?

16 **A.** We are in Berkeley, right above the University of
17 California campus. So if you're at U.C. Berkeley, that's a
18 little lower in the hills. Berkeley Lab abuts it and it's --
19 if you look straight uphill, you don't notice our buildings
20 because most are very gray on purpose, to be sort of not
21 very -- we don't stand out very much.

22 But anyway, it's in the hillside above the U.C. Berkeley
23 campus.

24 **Q.** Does the Berkeley Lab have any satellite locations
25 elsewhere in the Bay Area?

1 **A.** We do. About 25 percent of our laboratories actually off
2 site. The lab itself is pretty small. It sounds like a lot.
3 It's 200 acres. But 200 acres isn't enough for all of our
4 science teams.

5 So 25 percent of our science teams are in Emeryville and,
6 also, in Berkeley downtown, as well as on the waterfront. They
7 are in what's just leased facilities. Private landlords have
8 leased space to us. We use it for laboratory research. We do
9 our work there.

10 **Q.** Is there some land in Richmond that's associated with the
11 Berkeley Lab?

12 **A.** Well, the Richmond land is not really directly run by the
13 laboratory. Our scientists are allowed to use it. So we're
14 very distantly related.

15 The university manages that property. It owns that
16 property. But Berkeley Lab -- our science teams, a few of them
17 over the last 15 years that I'm aware of, have used that space,
18 but it's not one of our major satellite facilities.

19 **Q.** And technically speaking, you have been discussing the
20 Lawrence Berkeley Lab. Are you a lab employee, a DOE employee
21 or something else?

22 **A.** I'm -- we call yourselves lab employees, but I am actually
23 a University of California employee.

24 **Q.** Do you know who actually funds your salary?

25 **A.** Department of Energy, the federal government funds my

1 salary.

2 Q. And is that typical for employees at the Berkeley Labs?

3 A. Uh-huh. Yes.

4 Q. Setting aside salaries, who pays for the remainder of the
5 operations at the Berkeley Labs?

6 A. All of our operations primarily that I'm aware of, over
7 90 percent are paid for by the federal government through the
8 Department of Energy, federal.

9 Q. And do you have an idea of what the annual operating
10 budget for the Lawrence Berkeley Labs is?

11 A. Yes. Historically we have been about around 850 to
12 \$950 million. In 2019 we're going to be at approximately
13 \$1.4 billion to run the laboratory.

14 Q. And that's a yearly budget?

15 A. It is. It's our annual funding. It pays for people like
16 me, my salary; our scientists, their buildings.

17 Our biggest expenses are our buildings, our real estate,
18 our staff, our employees, our payroll, and then also their
19 equipment.

20 So, like, the super computer alone, each -- if we buy one,
21 if we procure one every single year, that's about 110 to
22 \$150 million for just that super computer.

23 Q. As you testified a few minutes ago, is that budget paid by
24 the Department of Energy?

25 A. Yes.

1 Q. What role do the U.C. regents, who you referred to a few
2 minutes ago, play in the operations of the Berkeley Labs?

3 A. Sure. So at its simplest level, it's pretty state
4 forward. The regents, they are a legal entity in California.
5 They have a contract with the Department of Energy. So these
6 two teams, these two entities have a contract together.

7 So the regents have a contract with the federal government
8 through DOE and then they pay -- the federal government gives
9 the university, the regents, U.C. Berkeley -- I'm sorry, U.C.
10 itself, money to operate what's called Berkeley Lab. So
11 Berkeley Lab is just a place. The legal entity that operates
12 it is the regents.

13 I'm an employee of the regents, but all the money we get
14 to run the place and have the laboratory is funded by the
15 federal government.

16 Q. And how long have you worked for the Berkeley Labs?

17 A. Sixteen years.

18 Q. And how much of that time has been in the procurement
19 field you were testifying about a minute ago?

20 A. All of my career has been in the procurement department at
21 Berkeley Lab. I have been on different teams, but it's all
22 been in that department.

23 Q. And when you first started in that department at the Labs,
24 what kind of procurement did you work on?

25 A. My first approximately seven, nearly eight years was as a

1 buyer in the design and construction team. So I would do the
2 design and construction POs that would get awarded to companies
3 that needed to get paid for the services that they were going
4 to deliver to us.

5 **Q.** You just mentioned a term there a moment ago a "buyer" and
6 then earlier you mentioned a "contracting officer." What's the
7 difference or relationship between those positions?

8 **A.** They are very similar. A buyer is a contracting officer,
9 in essence. The buyer may just have a much lower dollar
10 authority.

11 So, for example, I have a team of ten right now. And each
12 of them, if they are very junior and entry level in career,
13 maybe they have only been doing procurement for a few years,
14 they might be given what's called a warrant -- it's their
15 delegation -- of 25- or \$50,000 to spend. They are a C.O.
16 They can sign contracts at that level. But let's say they are
17 working on a contract that's \$200,000. I have to sign those
18 because it's above their level.

19 So the buyer at that level is just a lower level, less
20 experienced person.

21 I have been doing procurement for, well, a lot of years
22 and so I just have a higher delegation because I have more
23 experience and I'm also now a team lead and a manager.

24 **Q.** And so when you started, which I believe you mentioned was
25 in 2002, did you start with those smaller kinds of projects you

1 were just testifying about?

2 **A.** I did. Our buyer levels are five. So I was, like, a
3 buyer level two. We've got one, two, three, four and five. I
4 moved up and was promoted.

5 So my initial delegation was really low. It was about
6 \$25,000. And then I -- over time as I was promoted and gained
7 more experience, it went up to \$500,000 when I was a buyer.

8 **Q.** And looking at the department overall, the procurement
9 department, what's the range of goods and services that the
10 procurement department is responsible for acquiring?

11 **A.** We are responsible for acquiring 100 percent of what the
12 Berkeley Lab buys, from simple pens and pencils and, you know,
13 laboratory coats and safety glasses to really expensive
14 \$150 million super computers.

15 My team, the highest things that they handle are usually
16 80 to \$150 million contracts for building out a brand new
17 building, for example. But it can also be simple renovations.
18 Maybe, you know, \$5,000 for some new carpet or paint.

19 Our department handles all of the goods and all of the
20 services that the Berkeley Lab needs. We have a system where
21 people put in a requisition, ties to their account and money,
22 and then we place the order for them.

23 For really, really simple stuff, low, low dollar stuff, we
24 have an internal Amazon. People can go online. It's secured.
25 So if you need those pens and pencils, we don't want to make it

1 complicated because it's really low dollar. They can just
2 click and buy the pens and pencils they need. They get
3 delivered to them.

4 For a more moderate to highly complex work, we do need a
5 buyer to handle that because then that's the sourcing process.
6 They need to go find qualified companies and be able to give us
7 proposals. Then we evaluate and can award.

8 So we do the whole array, from really simple, moderate to
9 highly, highly complex.

10 **Q.** So when you use the term "buyer," does the buyer apply
11 both to tangible goods and services, or goods you can take off
12 a shelf, in addition to things like construction projects or is
13 it more limited?

14 **A.** No, it's the same. A buyer can do all of those.

15 Entry level jobs are usually like a P-card buyer, a credit
16 card holder. What you can't buy on our little internal Amazon
17 catalog list, we'll -- we don't disallow people to buy it if
18 it's related to their work. So a buyer might need to place
19 that on a credit card, and those limits are usually about
20 \$2,000 or less.

21 **Q.** And at some time in your tenure at the Berkeley Labs, did
22 you start working on construction-type projects, as opposed to
23 the other fields within procurement?

24 **A.** Uh-huh.

25 **Q.** When was that?

(Interruption in the proceedings.)

Q. Sorry. Go ahead.

A. That's okay. Can you repeat the question?

Q. I can't remember quite where I left off, but when did you first get involved in the construction side of procurement, as opposed to the other things you were mentioning?

A. Sure. So actually I started in the design and construction team from the very beginning of my career, which was about 16 years ago at Berkeley Lab.

I worked in other parts of industry in procurement for a number of years before going to Berkeley Lab. So I've always done design and construction contracts.

In other parts of my tenure I moved to different teams, so I would buy goods, but for the past 16 years I have always been involved in design and construction contracts.

Q. And in your tenure, you mentioned a bit ago that the Lawrence Berkeley Lab is the direct employer.

Are any of your duties focused on U.C. Berkeley as opposed to the Department of Energy, or is it all Lab/Department of Energy business?

A. I'm not allowed to do any other work except Department of Energy business. So when the Department of Energy gives the money to the University of California to run this place called Berkeley Lab, they really strictly limit our work to be directly to the federally funded projects or any money that

1 they approve.

2 So if the University of California, U.C. Berkeley or
3 U.C.S.F. or U.C. Davis, have projects and they want our help or
4 they want our expertise, I'm actually not allowed to work on
5 those projects. I'm directly funded by the federal government
6 and so my duties are limited to work on DOE projects.

7 **Q.** You mentioned a bit ago that you now have a team that
8 works for you. When did you first take a management position
9 at the lab?

10 **A.** I did in 2009. We have an early leadership program, so
11 instead of just switching people to manager without really
12 supporting them and knowing how to do that different role, I
13 took a team of two employees and I was a manager in training.
14 And then I took about a year of leadership training to
15 understand how to, you know, recruit, hire people, train
16 people, try to help them, you know, be good successful
17 employees, things like that.

18 So that was in 2009. That was my first step into
19 leadership. And then I continued after that.

20 **Q.** And at some point did you take a managerial role,
21 specifically over construction type projects?

22 **A.** I did. That was in 2012. And then I was there for a few
23 years, rotated to a few other teams, and then since 2017 I have
24 been 100 percent dedicated again to design and construction
25 contracts.

1 Q. Can you remind the jury, I believe you mentioned a bit
2 ago, how many people work on your team?

3 A. Currently I have ten employees.

4 Q. And what does your supervisory job involve over those ten
5 employees?

6 A. I assign their work daily and weekly and any contracts
7 that are above their authority. So let's say they have
8 \$100,000 where they can sign contracts, but they might be
9 working on a contract that's \$200,000. I would review that and
10 sign it.

11 I also recruit for our team, for our whole department. So
12 if there is a vacancy in another team because someone has
13 retired or taken another job, I will do recruitment. So I work
14 with HR to make sure we've got incoming team members that can
15 backfill.

16 I also oversee their quality. So, for example, if they do
17 a 20 contracts over a month, I will pull samples randomly and
18 make sure that they hit our compliance requirements.

19 The federal government puts a lot of requirements on us,
20 so I have to make sure that they are all met. And then when
21 they are not, I tell the employee so that they can correct it.

22 I also have regular one-on-ones with my team so that I can
23 assess their workload and, you know, challenges they might be
24 facing. And then I also write contracts, too.

25 Q. And you mentioned a bit ago that the relationship between

1 the regents and the Department of Energy had some
2 contractual -- I believe you mentioned a subcontract and a
3 prime contract.

4 Let's start with the prime contract. What was that a
5 reference to?

6 **A.** The prime contract, we call it Contract 31 because it's a
7 really, really, really long number and the last two numbers
8 happen to be 31. So we just call it Contract 31. That's the
9 federal contract that the Department of Energy has granted to
10 the university.

11 So I think in 2005 the federal government put out a bid to
12 see who else could run Berkeley Lab. They will do this
13 regularly if they so choose. The university put in a bid and
14 won that contract. So the federal government, DOE, gave the
15 regents a contract, which is now going to be on \$1.4 billion
16 next year, to operate Berkeley Lab.

17 So that's our prime contract. That prime contract gives
18 us the money, but it also has a scope in it that says you must
19 continue to do scientific research that meets the criteria we
20 establish. That's our prime contract.

21 Do you want me to talk about subcontract now?

22 **Q.** Let's stay on the prime for a moment. Do the terms of the
23 prime contract affect how you do your job and how your team
24 does its job in the procurement department?

25 **A.** Yes. It dictates nearly -- well, I won't say 100 percent,

1 but a substantial percentage of how we do our work.

2 **Q.** Okay. And then what's the subcontract you referred to as
3 well?

4 **A.** So the prime contract says you're allowed to issue other
5 contracts to do your work. So what my team and our department
6 does is issue subcontracts under that prime.

7 So when I'm cutting a simple purchase order, a PO, to a
8 company to sell us just a laptop computer, for example, or an
9 iPhone, we issue that PO and in it, in all of our contracts,
10 even the simple ones, it says, "This is subject to the terms
11 and conditions of prime contract 31."

12 **Q.** Understood.

13 **A.** So we just call them all subcontracts for convenience and
14 actually requirements.

15 **Q.** Now, I'd like to turn back to the physical lab again. You
16 testified, I think, or -- first of all, I think we will start
17 at the beginning. Where is the main campus located
18 specifically?

19 **THE COURT:** Maybe we should take a break now if we're
20 changing -- slightly changing gears.

21 Okay. Ladies and gentlemen, we're going to take our
22 recess now. We will be in recess until 10:35.

23 Remember the admonition. Don't discuss the case, allow
24 anyone to discuss it with you, form or express any opinion.

25 (Jury exits the courtroom at 10:19 a.m.)

CROSBY - DIRECT EXAMINATION / DAWSON

1 **THE COURT:** Let the record reflect the jurors have
2 left.

3 Ms. Crosby, let me ask you a question to make sure I
4 understand the relationship.

5 As I understand the relationship, it is that you are an
6 employee of Berkeley Labs; is that correct?

7 **THE WITNESS:** That's correct.

8 **THE COURT:** So you get a check from Berkeley Labs?

9 **THE WITNESS:** I get a check from the University of
10 California.

11 **THE COURT:** All right. You get a check from the
12 University of California because the University of California
13 has a number of labs. And you are an employee, then, of the
14 University of California, I assume?

15 **THE WITNESS:** That's correct.

16 **THE COURT:** Okay. And you run the procurement
17 section of Berkeley Labs. I don't know if it's larger than
18 that or smaller.

19 **THE WITNESS:** Uh-huh. That's correct.

20 **THE COURT:** Now, there is something unusual about
21 the -- when I say "unusual," the Richmond Lab, unlike the other
22 Berkeley Labs, is -- unlike some, I don't know whether all --
23 is actually owned by the University of California, as distinct
24 from some of the other labs; is that right?

25 **THE WITNESS:** That's correct. Also --

CROSBY - DIRECT EXAMINATION / DAWSON

1 **THE COURT:** And they operate it?

2 **THE WITNESS:** Pardon me?

3 **THE COURT:** And they operate it? So it's owned and
4 operated?

5 **THE WITNESS:** That's correct.

6 **THE COURT:** So I'm trying to figure out if a fraud
7 occurs with respect to the Riverside -- Riverside. The
8 Richmond Lab, quote, who is defrauded? Who is the victim? Is
9 it the University of California or is it the -- or is it the
10 Department of Energy?

11 I don't know that you can answer that, but other than
12 the -- and I have to ask the Government that.

13 **MR. DAWSON:** I think maybe I should ask a clarifying
14 question.

15 **THE COURT:** Go ahead.

16 **MR. DAWSON:** Is there actually a lab located at the
17 Richmond site?

18 **THE WITNESS:** What kind of --

19 **MR. DAWSON:** Like a laboratory, to your awareness?

20 **THE WITNESS:** Not that I'm aware.

21 **THE COURT:** What is it?

22 **MR. DAWSON:** When we refer to the National Lab, the
23 actual laboratory, that's the location in Berkeley.

24 **THE WITNESS:** Yes.

25 **THE COURT:** I'm sorry. What is Richmond?

CROSBY - DIRECT EXAMINATION / DAWSON

1 **MR. DAWSON:** So there's a satellite location, there
2 was some testimony about, in Richmond. But my understanding of
3 the testimony is that the Lawrence Berkeley National Laboratory
4 itself is the site at Berkeley.

5 **THE COURT:** So there is no Richmond.

6 **MR. DAWSON:** There is a place in Richmond, but as the
7 witness testified, it's used, but it's not the sort of central
8 location.

9 **THE COURT:** Is Richmond at all involved in this?

10 **MR. DAWSON:** There is some references on some
11 recordings.

12 The building in question was at -- it's at the Berkeley
13 site. I want -- the Richmond shows up on some recordings, so
14 its relationship --

15 **THE COURT:** The building is at Berkeley, but people
16 refer to it as Richmond?

17 **MR. RIORDAN:** No, your Honor.

18 What's going on is that there is a Berkeley, University of
19 California facility in Richmond that is not a DOE facility.

20 **THE COURT:** Right.

21 **MR. RIORDAN:** The Berkeley National Lab is funded by
22 the DOE. And as the witness has said, she can't do anything
23 related to Richmond because that isn't related to the DOE.

24 **THE COURT:** And so my question is, let's say I'm
25 there and I want to submit a bid to build a building in

1 Richmond. What does that have to do with DOE?

2 **MR. DAWSON:** In 2013 there was a proposal between
3 Berkeley and DOE to develop buildings in Richmond, in 2013 and
4 2012.

5 But the focus of the contract here, the plans here, the
6 building here, that's not in Richmond. That's in Berkeley.

7 **THE COURT:** Well, that's all perfectly unclear.
8 Okay. Thank you.

9 (Whereupon there was a recess in the proceedings
10 from 10:24 a.m. until 10:40 a.m.)

11 **THE COURT:** Let the record reflect all parties are
12 present. You may proceed.

13 **MR. DAWSON:** Thank you, your Honor.

14 **BY MR. DAWSON**

15 **Q.** Ms. Crosby, before the break I think we were talking about
16 some of the different locations associated with the lab. I
17 think there may have been a bit of confusion, so I wanted to
18 circle back and make sure that everybody was clear.

19 The facility in Berkeley itself, who owns the actual
20 laboratory, the buildings that sit at that laboratory?

21 **A.** So the buildings are all owned by the Department of
22 Energy, federal government. The land that they sit on is owned
23 by the regents, University of California.

24 **Q.** And is there some kind of a lease arrangement? Do you
25 know the details of that?

1 **A.** Yes. As part of that prime contract, in it we have
2 agreements that have the regents, U.C., gives the land to DOE
3 and then DOE builds buildings on it. So all of those buildings
4 are federal property, but they sit on regents' land and they
5 are encumbered by a real estate lease.

6 It's very common in industry to have a 50 or a 99 year
7 lease. Most of our leases are 99 years long. So the federal
8 government knows it can have its property not moved or
9 anything, the buildings. And usually the landlord will get
10 rent for that, the regents here. We're not-for-profit. We're
11 promoting research and education, so we rent that land for a
12 dollar.

13 **Q.** And now there was a brief reference to a location in
14 Richmond the last time you were testifying. Do you recall
15 that?

16 **A.** Yes. Yes, I do.

17 **Q.** And at the moment, today in 2018, do you know who owns
18 that land?

19 **A.** Yes. The Richmond Field Station is owned by the regents
20 also, by U.C.

21 **Q.** And in the 2012 and 2013 time frame was there a proposal
22 or a consideration to put a department of Department of Energy
23 facility on that land?

24 **A.** Yes, there was.

25 **Q.** And did you have any role in that process?

1 A. I did.

2 Q. What was your role?

3 A. My role was, as a procurement contracting officer, to
4 issue a solicitation, which is called a Request For Proposal.
5 So I issued an RFP that asked companies about the potential to
6 build out that space for future laboratory use.

7 Q. Am I correct that this was essentially made public, that
8 the Department of Energy was considering developing this land?

9 A. Yes.

10 Q. Do you know whether that project ultimately was
11 implemented?

12 A. I do. It was not implemented or funded.

13 Q. Do you know why?

14 A. There were a lot of reasons, but primarily because of
15 cost.

16 Q. And who would have paid for the development of that
17 location?

18 A. The federal government, DOE.

19 Q. And so the land is still there, and did you testify
20 earlier that scientists make use of it still?

21 A. They do on occasion. So one of our scientists, for
22 example, in the last three or four years used a portion of the
23 land to bury metal so that he could do research on detection of
24 mines that would explode. We didn't have explosives there,
25 but, you know, just inert metal. And so they do research out

1 there on occasion.

2 The proposal that I was issuing back in 2012 and '13 was
3 to actually develop the property, put utilities into it, build
4 it out for laboratory use.

5 Q. And did you ultimately receive proposals in that process?

6 A. We did. We received initial proposals and we started
7 evaluating. And as part of that, the Department of Energy
8 assessed that it was really quite expensive to build out there.

9 Q. And now turning back to the Berkeley location, the actual
10 Lawrence Berkeley National Laboratory.

11 A. Okay.

12 Q. Approximately how many buildings make up the lab that's
13 located at Berkeley?

14 A. The main campus at the Berkeley Lab has over 100
15 buildings.

16 Q. And those buildings are owned by DOE?

17 A. Yes.

18 Q. Is that campus accessible to the public?

19 A. The campus isn't. You need guest access and gate entry
20 with a visitor.

21 Q. And do you know why access is restricted?

22 A. Yes, because it's a federal facility. Even though the
23 land is U.C. regents' land, nearly all of the buildings are
24 federal.

25 So there are a couple of buildings that are not federal,

1 but 99.9 percent are federal. So because it's a federal
2 facility, it's protected and gated and we have guards at our
3 gates.

4 Q. And if somebody working for the lab, if a scientist wanted
5 to build a new building or renovate an old building, which
6 department would handle the process to implement that?

7 A. So my department works in partnership with our facilities
8 team. They are our really estate office. They have project
9 managers that will talk to a researcher and say: What do you
10 need? What does your space need? And what renovations are you
11 thinking about? Or if it's a new building: What will your new
12 building need to do to meet your scientific need?

13 Q. If it's a new building, who would pay to construct that
14 building?

15 A. Department of Energy.

16 Q. If they are renovating an existing building, who would pay
17 to renovate the building?

18 A. Again, it would be the Federal Department of Energy.

19 Q. Do you know whether there's a building at the Berkeley
20 location of the laboratory known as Building 84?

21 A. I do.

22 Q. Is there one --

23 A. Yes.

24 Q. -- to be clear, for the record?

25 A. Yes. There is a Building 84 on the main Berkeley Lab

1 campus.

2 **Q.** And if that building were to be renovated, who would pay
3 for that?

4 **A.** Same. It would be Federal Department of Energy that would
5 pay for renovations.

6 **Q.** And if the building were to be renovated, would it be
7 somebody on your team who would be responsible for running that
8 process?

9 **A.** Yes. A buyer would -- I would assign a buyer to work with
10 the project manager and the scientists to see what they need
11 and then start the sourcing process to get designers,
12 architects, engineers and builders to do that work.

13 **Q.** Okay. Now, when that process kicks off, are there any
14 regulations or guidelines that apply to how your group does its
15 work?

16 **A.** Yes. We're guided primarily by what's called the FAR,
17 Federal Acquisition Regulation.

18 **Q.** And is that a felt of regulations unique to the Department
19 of Energy or does that apply more broadly?

20 **A.** It's actually broad. The federal government, across even
21 defense spending for military equipment, will abide by the FAR,
22 Federal Acquisition Regulation, although every department has
23 what's called an overlay.

24 So, for example, Department of Energy has DEAR, D-E-A-R.
25 That's the Department of Energy Acquisition Regulation.

1 But if you were to get a book of both, the FAR is, like,
2 two inches thick and DEAR would just be a little bit of rules
3 on top of it, very thin.

4 So it's an overlay. The primary base is the Federal
5 Acquisition Regulation.

6 **Q.** Can you give the jury an example of what kinds of rules or
7 regulations or guidelines are found in the FAR?

8 **A.** Sure. Yes. So the Federal Acquisition Regulation has 52
9 sections, and they start with definitions. They say when
10 you're going to go buy things, follow these rules. And as a
11 result, if you get to design or construction services, that's
12 FAR part 36, so you will go to that section and it says when
13 you're going to hire design architects, here is how you do it.
14 If you need construction contractors, here is how you do that.

15 So for construction contractors, it might limit people who
16 are in that industry, have a certain safety record. You want
17 to assess other qualifications. And the FAR lays out some of
18 those parameters.

19 **Q.** Do these regulations you're referring to relate in any way
20 to the prime contract you were talking about earlier that
21 governs the relationship between DOE and the lab?

22 **A.** Yes, they do. They relate directly.

23 **Q.** How so?

24 **A.** The prime contract tells us at Berkeley Lab that when we
25 go procure things and buy them, we need to abide by certain

1 sections of the Federal Acquisition Regulation.

2 **Q.** Do you and your staff receive training in those
3 requirements?

4 **A.** We do.

5 **Q.** Now, I'd like to get into some of the specifics in the
6 procurement process.

7 So in the event a building had to be renovated, who, first
8 of all, makes the decision on whether a renovation is going to
9 happen or not?

10 **A.** Primarily our scientists and users. So I sit in office
11 space. I'm not in laboratory space. So it could be my
12 department head, which might say: Oh, our sinks need
13 renovation and our bathrooms aren't as nice or as functional as
14 they could be or they need to be more ADA compliant. So
15 whoever the user is, usually it's our scientists, will say: I
16 need different things for my laboratory, so I want to build out
17 or renovate this space.

18 **Q.** And who decides whether or not to spend the necessary
19 money to complete one of those projects?

20 **A.** Well, ultimately it's the Department of Energy, because
21 they give us the money, but the ask will come from our
22 scientists. They will say: I need more fume hoods. I need
23 more lab benches. I need a deeper sink. Whatever they need to
24 do their research.

25 So they will have an ask. So it's -- I'll compare it to

1 maybe renovating your house. You might think about renovating
2 your bathroom. Your budget might be pretty limited; right? It
3 might be \$20,000, but your desire might be 30- to \$40,000.
4 That right sizing happens by having a conversation with the
5 scientist that says: Here is what I'd like, and then their
6 budget, which is here is how much money you can have.

7 **Q.** And so once you have the necessary budget, if the
8 Department of Energy agrees to fund, what's the next step that
9 you and your team go through for a building renovation?

10 **A.** We hire architects and engineers by having them assist us
11 in laying out the plans and specifications for what the
12 renovations entail. That's step one.

13 **Q.** And can you give us a little explanation of plans versus
14 specifications?

15 **A.** Sure. So plans are usually drawings. They may still have
16 details on them that describe what the drawings are.
17 Specifications will be how you do that work at Berkeley Lab.

18 So there are general construction industry standard
19 specifications for electrical, plumbing, concrete, all kinds of
20 trades. But at Berkeley Lab we have our own specifications
21 that say when you work at Berkeley Lab, the specifications when
22 you work on our equipment or lighting, keep in mind these
23 certain things. We might have these kind of lights or that
24 kind of light.

25 The plans themselves are typically drawings that will lay

1 out what that building configuration is. So, you know, here in
2 this courtroom there is the hallway, each of the court centers,
3 the restroom. The plans will lay that out.

4 **Q.** Okay. I'm going to show you what's been admitted as
5 Exhibits 39.

6 (Whereupon document was tendered to the witness.)

7 **Q.** Can you tell what kind of document that is?

8 **A.** Yes. This is typically what we refer to as plans,
9 drawings and plans.

10 **Q.** And so you were describing this in the abstract a few
11 minutes ago, but looking at them, what are the kinds of details
12 that are contained in plans?

13 **A.** So, for example, here there is first floor east demolition
14 plan, and it shows a lot of rooms with the main corridor
15 hallway. So that layout of a drawing is what's typical in
16 plans.

17 **Q.** And what -- what different kind of information would be in
18 a specification for a project?

19 **A.** A specification would list, mostly verbally instead of in
20 drawings, a list of the detail of what might be in the guts of
21 this location and then what you should be aware of if you're a
22 construction contractor when you come in to do that work.

23 **Q.** And so in the process that you were describing earlier,
24 once you've obtained specifications and plans, what happens
25 next?

1 **A.** We work with the facilities team, usually a project
2 manager, that gives us information about the potential
3 suppliers, but also the nature of the work that needs to be
4 completed. So it's really the scope.

5 And based on the scope we receive, we're going to look for
6 companies that can do that work by issuing either information
7 requests to companies, calling them, emailing them and seeing
8 who can actually do that work. So we start searching for the
9 source.

10 **Q.** Is there a step in this process where you, on your team or
11 somebody else, would generate an independent estimate of what
12 the project will cost?

13 **A.** Yes. We do get independent estimates, not for every job
14 when they are low dollar. They are required at \$150,000 or
15 more.

16 So if the renovation is that high or higher, the
17 facilities team, their project manager has an independent
18 estimator that gives a cost of what it may be to do the
19 renovation that the scientist needs.

20 **Q.** I believe you made a reference to this earlier, to
21 something called a Request For Proposals. Is that a term that
22 you're familiar with?

23 **A.** It is.

24 **Q.** What does that refer to?

25 **A.** A request for a proposal is a solicitation. It will be

1 issued to whoever can do the work by saying: I'm asking you.
2 Here is a request for you, company, to give me a proposal.

3 Q. And is there something in the process also known as an
4 Invitation To Bid?

5 A. There is.

6 Q. What's that mean?

7 A. It's a request -- it's very similar. It's nearly
8 identical. Invitation To Bid is the same thing. We issue it
9 to companies to say: Here is an invitation for you, companies,
10 to give us a bid.

11 Q. And what's the relationship, if any, between a proposal
12 and a bid?

13 A. They are very similar. Typically a bid might be a hard
14 dollar amount that tells you here is how much it costs to do
15 this work.

16 A proposal might be a little lengthier, with a little
17 information about how they might do that work.

18 And in the invitation if I asked for their request to
19 address certain things, how they are going to do that work, a
20 proposal might give a little bit more detail, plus the bottom
21 line price.

22 Q. And so you referred to what you may ask as the contracting
23 officer. Does the contracting officer have discretion to
24 include the kinds of information that she wants to see in a bid
25 or proposal?

1 **A.** Yes. We have a lot of discretion. It's not unlimited.
2 If you'll recall, the prime contract and the FAR, the Federal
3 Acquisition Regulation, it dictates things that I don't have
4 discretion to waive.

5 But as far as discretion about how I ask for things or
6 what I need, yes, we have latitude.

7 **Q.** And does a contracting officer have discretion as to
8 whether to proceed with a Request For Proposal as opposed to an
9 Invitation To Bid?

10 **A.** Yes, we do.

11 **Q.** I would like to take a look at what's been admitted into
12 evidence as Exhibit 45.

13 **MR. DAWSON:** And, Ethan, if we can pull this up since
14 it's in evidence? Page 2.

15 (Whereupon document was tendered to the witness.)

16 **BY MR. DAWSON**

17 **Q.** Now, Ms. Crosby, I know your name is not on this document,
18 but from your experience do you recognize what kind of document
19 this is?

20 **A.** Yes, I do. Is it --

21 **Q.** What is -- please, go ahead.

22 **A.** It looks like a submission of a proposal in response
23 probably to a request for a proposal.

24 **Q.** And do you see, does it reference a lump sum bid about
25 halfway through?

1 A. Ye.

2 Q. Does this resemble the kind of bid letter that somebody in
3 your office might receive?

4 A. Yes, it does.

5 Q. In terms of the information that's included in this bid
6 letter, does the contracting officer have discretion to require
7 the bidders to provide extra information beyond what you can
8 see here?

9 A. Can you repeat that? Does the contracting officer do
10 what?

11 Q. Does the contracting officer have discretion as to what
12 kind of information a bid must include?

13 A. Yes, a contracting officer does. They can ask for
14 additional explanation, for backup documents.

15 Q. Does this document appear to be the kind of document that
16 you would receive in the normal process that you oversee at the
17 Lawrence Berkeley Labs?

18 A. It does.

19 MR. DAWSON: And if we could turn to the next page?
20 And, actually, let's move on to Page 4. One more.

21 (Document displayed)

22 BY MR. DAWSON

23 Q. Are you on Page 4, Ms. Crosby?

24 A. Not yet.

25 Q. I believe --

1 A. I am now.

2 Q. Is the format of that document familiar to you?

3 A. It is. Yes, it is familiar to me.

4 Q. What does it appear to be?

5 A. It's a screening questionnaire and sometimes we call these
6 qualification questionnaires. It's asking a company to
7 identify certain things about what they do.

8 So it could be -- for example, number one, Experience
9 Modification Rate. We regularly ask for that. We want to see
10 that it's one or below. It's a rate by the insurance industry
11 that will tell us that this company has a pretty good safety
12 record. They don't have high incidents of injury for their
13 laborers, their construction workers, or other, you know,
14 safety things that have happened on their jobs.

15 So it looks like a questionnaire that says: Can you do
16 this job and can you meet our -- some of our basic
17 requirements?

18 Q. Sorry to interrupt, but are these the typical kinds of
19 questions that one would ask in this process from your
20 position?

21 A. Yes. These are very typical, especially the license.
22 Number six, Do you hold a license, B contractor's license?
23 That's required.

24 Q. This may be obvious, but what's the purpose of soliciting
25 this kind of information from a bidder?

CROSBY - DIRECT EXAMINATION / DAWSON

1 **A.** In order for a bidder to be able to do our work, we want
2 to make sure that they are responsive to what we ask for and
3 responsible. Responsibility is really critical --

4 **THE COURT:** Let me ask the jury, can you see this?

5 Mr. Dawson, why don't you blow up any portion. You show a
6 document to the jury, do you want them to see it?

7 **MR. DAWSON:** Good point, your Honor.

8 **THE COURT:** Then I think you should blow up the
9 portion so they can see it.

10 **MR. DAWSON:** Everybody see fair enough now?

11 **THE COURT:** You can highlight a portion. You can --

12 **MR. DAWSON:** Why don't we highlight the first one
13 through four.

14 (Document highlighted.)

15 **THE WITNESS:** Oh, that helps.

16 **BY MR. DAWSON**

17 **Q.** So you were testifying a little earlier about the
18 modification rate?

19 **A.** Yes. Experience Modification Rate.

20 **Q.** Where is that on this form?

21 **A.** It's Item No. 1.

22 **Q.** And then there is a reference under number two about OSHA?

23 **A.** Uh-huh.

24 **Q.** Do you know what that's a reference to?

25 **A.** It is. It's their environment -- it's their health and

1 safety.

2 So the health and safety requirements by California OSHA
3 will tell us whether they have reported citations for violating
4 it by having employees that were injured on a job. If they had
5 other incidents that had to be reported to OSHA because they
6 didn't have strong and good safety practices.

7 **Q.** And is this the type of information that you would
8 typically solicit in the process?

9 **A.** Yes.

10 **MR. DAWSON:** So if we could remove that magnification
11 and then go down five to eight?

12 (Document highlighted.)

13 **BY MR. DAWSON**

14 **Q.** You mentioned a little bit ago about a license?

15 **A.** Yes.

16 **Q.** What kind of license are you looking for?

17 **A.** Companies need to generally have either an A or a B
18 license. B is very common. It's a general contractor license.
19 A is an engineering license.

20 Anybody that holds an A or a B license within the state
21 can hire lower tiers, plumbers, electricians, trade specific
22 companies that can then perform that work. We always want a
23 company to be licensed and typically a B license is very
24 common.

25 **MR. DAWSON:** And then if we could remove that

1 magnification and just magnify the number nine.

2 (Document highlighted.)

3 **BY MR. DAWSON**

4 **Q.** Do you see that that's highlighted on the screen?

5 **A.** Yes.

6 **Q.** What kind of information is that requesting?

7 **A.** We typically want to make sure that the company that
8 performs the job has relevant experience and we will check
9 references.

10 So we'll ask them: Have you done work similar to our
11 project? And can we know the name and contact information for
12 that other project? And we'll call them and ask them questions
13 about their performance. Would you hire them again, or was
14 their performance satisfactory?

15 **Q.** Okay. Now I'd like to move on to a slightly different
16 variation on this theme. You testified earlier --

17 **THE COURT:** Wait. Could you explain what paragraph
18 eight is? Highlight that.

19 (Document highlighted.)

20 **THE WITNESS:** Absolutely. So paragraph eight asks if
21 they are capable of bonding the job. And bonding capacity is
22 important because it's a FAR requirement, Federal Acquisition
23 Regulation.

24 So it will ask -- this is asking: Can you bond the job?
25 And if you can, at what level? And then to make sure that we

1 can cover the work. So bonds ensure two things primarily,
2 performance and payment.

3 On occasion our general contractors don't pay lower tiers.
4 So we want to make sure that they are going to get paid. So
5 the bond does that, because we would go to the surety, we would
6 go to the insurance company to make sure they are paid.

7 **THE COURT:** What are the responses here?

8 **THE WITNESS:** So --

9 **THE COURT:** What does that mean?

10 **THE WITNESS:** So this is asking about: Can you get
11 the bonding? And if you can, at what level?

12 So they have responded: Do you have a relationship with
13 the bonding surety -- so, I apologize.

14 First is: How quickly can you get bonded, and to what
15 dollar value, and do you have an ongoing relationship with the
16 bonding surety and insurance company?

17 Their response, I think, is in the lighter font. It's
18 ASAP. And the surety levels would be 2 million in a single,
19 4 million aggregate, or 10 million single and aggregate. That
20 would be to cover that job based on the nature of umbrella or
21 general coverage we would want.

22 **THE COURT:** Can you explain? It says single,
23 aggregate for fixed price, and single and aggregate. Would you
24 explain each of those things.

25 **THE WITNESS:** Sure. So single is usually -- I'm not

1 100 percent sure because I don't have -- I haven't really seen
2 this. And, also, I don't know the context fully of what was
3 asked for by the contracting officer.

4 But typically single is for a single incident that might
5 happen on the job. We want to make sure that they have
6 insurance coverage up to \$2 million.

7 Aggregate --

8 **THE COURT:** So that's not a performance bond. That's
9 simply an insurance that it could cover any accident or
10 something of that nature.

11 **THE WITNESS:** That's correct.

12 **THE COURT:** A single occurrence.

13 **THE WITNESS:** That's correct. That's usually their
14 general liability insurance.

15 **THE COURT:** Okay. Now move to the next one.

16 **THE WITNESS:** And then aggregate would be, well, this
17 is for fixed price contracts. So if the contract is at some
18 level, let's say \$5 million. They have \$4 million of aggregate
19 coverage for other incidents that would happen, and that would
20 be sort of for any general claim usually.

21 And then 10 million looks like it's their combined, single
22 or aggregate, cost plus project. So cost plus projects are
23 higher risk. It's not just do the job for a fixed price, but
24 do the job for what it costs you and we'll cover you.

25 So the government is covering a lot more risk and as a

1 result, they usually ask for a higher coverage and here they
2 have provided 10 million.

3 **THE COURT:** Thank you.

4 **THE WITNESS:** You're welcome.

5 **BY MR. DAWSON**

6 **Q.** And now if we can turn to the financial process when one
7 of these projects gets going.

8 You testified earlier that the money would come from the
9 Department of Energy. How does that federal money ultimately
10 get to a contractor who is working on a project?

11 **A.** So the federal money comes from the United States
12 Treasury. It gets transferred to Berkeley Lab through our bank
13 account. The U.S. Treasury transfers money to the regents.
14 The regents hold it in a federal account, or a bank account,
15 and then the money goes into project accounts at the lab level.

16 So the scientists that wanted to renovate their laboratory
17 might get, you know, \$1 million of that allocation and that
18 goes through projects and IDs that we set up within our
19 institution.

20 **Q.** And when the bids come in or when a bid comes in, is it
21 always reviewed by a team or is a single contracting officer
22 authorized to accept bids?

23 **A.** They are typically within a team. A contracting officer
24 does have authority to accept them. However, they usually do
25 it not in isolation, but with the people that need the work

1 done. So the project manager and the scientist.

2 Q. And so in terms of on your team, does one contracting
3 officer have to consult with a supervisor, for instance, if
4 there is a bid that's within their authority?

5 A. No, they don't need to consult with me or a supervisor.

6 Q. Do prospective bidders for a construction project ever
7 visit the site that's to be renovated or constructed?

8 A. Yes.

9 Q. Do you know why they do that?

10 A. Well, visiting a site gives you an enormous amount of
11 intelligence. So if you're coming to a job site to do
12 construction work, imagine visiting a very flat space with a
13 nice big parking lot. Berkeley Lab doesn't have any of that.
14 We are on a hill. We're really steep. And it's really
15 informative to do a job site visit so that you can see the
16 conditions.

17 If you're working in downtown San Francisco or in
18 Berkeley, it's a lot, lot smaller versus, you know, a very
19 expansive area, let's say, in Livermore.

20 So job site visits are pretty typical and the companies
21 that come will see a lot of conditions that they won't be able
22 to pick up from plans and specifications.

23 Q. And you mentioned earlier that the site is not accessible
24 to the public. So how does a bidder come to visit the
25 location?

1 **A.** Bidders are invited. They also get guest passes. So if
2 they are interested after we've called them and emailed them,
3 they will say: Put me name on the list. And we give our
4 guard -- guard gate entrance people the list of people that may
5 show up. We also tell them: Don't close off the doors if
6 other people show up as well because this is a public bid.

7 So what we'll do is leave our cell phone with a guard and
8 the guard will have a list of their names. And then they get
9 access to the site, and they will get directions, and they will
10 let us know in email and telephone calls that they are going to
11 attend. If they bring others that might be invited, they are
12 also included.

13 **Q.** And you mentioned first you have the site visits, which
14 some people take advantage of. Do you tend to also provide
15 copies of the plans and the specifications to a prospective
16 bidder before the bid is sent in?

17 **A.** Yes, we do.

18 **Q.** Why is that?

19 **A.** It gives companies a lot of opportunity to read and study
20 them and also, really more importantly, to ask questions about
21 them.

22 If the specifications or the plans, which are the
23 drawings, don't really clearly show the number of door handles
24 and what we want as doors, they can ask those types of
25 questions.

1 Q. And how long do prospective bidders typically have on a
2 construction contract to study the specifications and study the
3 plans before the bids are due?

4 A. Typically they have 20 to 30 days. The average comes out
5 to usually about 30 days.

6 Q. You mentioned as well that sometimes a bidder will have
7 questions about plans once they have reviewed them. How does
8 the bidder go about getting those questions answered?

9 A. They submit the questions -- well, they can call or submit
10 questions in email. Once they call, we always say: Great
11 question, please write it down. And then they will email us.

12 So the preferred method and the standard is to email all
13 questions to the contracting officer. Then the contracting
14 officer gathers all the questions and provides answers and then
15 submits them all back to company simultaneously, so they all
16 have the ability to get the same questions and the same answers
17 all at the same time.

18 Q. Why is it your practice to send the answers to the
19 question to everybody, even though only one bidder asked the
20 question?

21 A. That way you're allowing everybody to have an even playing
22 field when they submit a proposal or a bid.

23 Q. Now, you testified a little bit ago about the FAR and the
24 Department of Energy overlay. So we don't -- I don't want to
25 get back into those, but can you explain what the overall goal

1 of the procurement process is for the Department of Energy?

2 **A.** Sure. So I think my core job and our department's core
3 function is to make sure we have fair and reasonable prices.
4 Fair and reasonable isn't always the absolute lowest price, but
5 it needs to be pegged to fair and reasonable so that we, as
6 taxpayers -- I'm a taxpayer -- I want to make sure that my
7 money is used by the federal government not in an excessive
8 way, but in a very fair way and a reasonable way. So that's
9 really our core function in procurement.

10 **Q.** And you mentioned earlier that it's common to have
11 multiple bidders; that when you get a question, you would give
12 the answer to everybody.

13 Does the presence of multiple bidders play a role in your
14 goal of ensuring the best price?

15 **A.** Yes. It's the absolute best way to know you have fair and
16 reasonable prices.

17 **Q.** Why is that?

18 **A.** You can take -- let's say there are four companies giving
19 you a bid. You can take each of those bids and compare them to
20 one another and get an immediate gauge of whether they are in
21 the ballpark for the price of the project that you estimated.
22 And, also, it gives you immediate competition. Competition is
23 really healthy. It's very good. And then it tells me, as a
24 contracting officer, okay, I know now I'm awarding this based
25 on bids that I receive from companies who are all really

1 fighting for the opportunity to win that award.

2 **Q.** And does the competitive process play a role in ensuring
3 that the Government doesn't overpay for a particular project?

4 **A.** Yes, absolutely.

5 **Q.** And in terms of the contract administrator or the buyer,
6 what role does that individual play in ensuring this
7 competitive process you were testifying about?

8 **A.** We're independent from the people that need the job done.
9 We're not part of their department. We are officers that
10 represent the money and to make sure that the money that's
11 spent is spent with integrity.

12 So because we're independent, it gives a level of distance
13 from the people that want the project done to make sure that
14 it's being spent fairly, reasonably and not wastefully.

15 **Q.** And do the rules within which you operate permit a
16 contract administrator to award a contract to somebody prior to
17 even sending out a solicitation for bids or proposals?

18 **A.** Yes. That would be a sole source award. We can do that.

19 **Q.** What's the review process like that?

20 **A.** Well, depending on the dollar value, if you're spending
21 anything before \$25,000, we need to demonstrate that the prices
22 we're paying are fair and reasonable. It's very hard to do
23 that without competition.

24 So if you can imagine trying to justify a price for
25 something that you don't have any competition for, it just

1 takes a lot more work. You can do it, but it can slow you down
2 and, also, doesn't have a good gauge in the market to show that
3 the price you're paying is really fair.

4 **Q.** And if the contracting officer has chosen to proceed with
5 the bids, in that context can the contracting officer promise
6 the contract to a particular contractor in advance of receiving
7 those bids?

8 **A.** No. That's illegal.

9 **Q.** How would something like that undermine DOE's goals for
10 getting the best product for the best price?

11 **A.** Essentially DOE would have no gauge to know that the price
12 is fair or reasonable and that the integrity of the process has
13 been maintained. It really undermines the integrity of the
14 process, so there wouldn't be any gauge to do that.

15 **Q.** You testified earlier that one of the steps in the process
16 would be maybe to get an independent estimate of a project?

17 **A.** Yes.

18 **Q.** How does that come about?

19 **A.** An independent estimate is done usually by internal
20 employees. They are separate from the scientist or the person
21 that needs their place renovated. They are in-house people
22 that review the plans, the specifications, and then assess what
23 the price may be ultimately for that build-out.

24 They are a really good gauge to get an assessment of what
25 the should cost is. So if the project should cost a million

1 dollars or something else, they give us that immediate gauge.

2 Q. And what do you do -- what do you use this estimate for?

3 A. I'm required to -- my team and I are required to get an
4 independent estimate at \$150,000 or above for a contract. We
5 use it to know the estimate value, approximate value of what
6 the bids should come in at and, also, for budgeting.

7 It's really important for the scientists. So if they come
8 in with a budget ask of \$5 million, but they only have a
9 million, our estimator will say: You have want so many other
10 things in your build-out, you just can't afford all of that.
11 So they will start taking things out of their project. So it's
12 a good way to budget.

13 Q. And is that internal cost estimate ever made public to the
14 potential bidders?

15 A. No, never.

16 Q. Why not?

17 A. It would provide a really unfair advantage to bidders and
18 companies that want to win that award.

19 Q. How so?

20 A. They would all know our internal gauge of what the price
21 should be. They could peg it at that price or just below or
22 just above. It would not be fair.

23 Q. And is that the equivalent of inside information about the
24 project?

25 A. Yes.

1 Q. And in the normal process do bids ever come in lower than
2 what your independent estimate may have been?

3 A. They do.

4 Q. Do bids ever come in higher than what the independent
5 estimate would have been?

6 A. Yes, they do.

7 Q. And if that happens, what's the process?

8 A. When they come higher, we can go into discussions with
9 companies to understand the basis of their estimate. Usually
10 the construction company might have an internal estimator also.
11 They might give us details about what made up their estimate.

12 We can also go back to our scientist or whoever needed the
13 renovation or the new building and ask them to take things out
14 that might not be critical for the building. Maybe a very
15 pretty awning that cost a lot of money could go.

16 So that's called value engineering and it will reduce the
17 scope and the price of the project.

18 Q. And who is responsible for starting that value engineering
19 proposal or process? Is that the contracting officer?

20 A. It is, as well as the project manager. Because I can't
21 sign a contract that I don't have money for. It needs to meet
22 my budget.

23 Q. Are you familiar with the phrase "fraud, waste and abuse"?

24 A. I am.

25 Q. Do those terms come up in your work with the Berkeley

1 Labs?

2 **A.** Yes, they do.

3 **Q.** How so?

4 **A.** We receive training in fraud, waste and abuse, how to
5 identify it, how to avoid it, how to report it. Yeah.

6 **Q.** And what kind of -- first of all, who provides the
7 training you were just referring to?

8 **A.** We have two forms of training. Sometimes they are from
9 external and a lot of internal training.

10 So internal training is for our whole department. We have
11 a policy team that will do internal training.

12 Then externally we'll have Department of Energy IG,
13 Inspector General provide training. On occasion it could be by
14 the FBI or other law enforcement that will come to us and give
15 us training on identifying fraud, waste or abuse. Those are
16 primarily the two ways that we get a lot of training.

17 **Q.** And in the context of this phrase, do you have a
18 particular understanding of what the word "fraud" is referring
19 to?

20 **A.** I do.

21 **Q.** What's that?

22 **A.** Fraud is when you're trying to present material that isn't
23 accurate or truthful.

24 **Q.** And how about "waste"? What is "waste" a referral to?

25 **A.** Waste is when you're overprocessing or taking steps that

1 really aren't necessary, that you could eliminate to save money
2 or save time.

3 **Q.** And lastly, how about "abuse"?

4 **A.** Abuse can be abuse of the process or even of authority.
5 So if people on my team or myself act outside of our authority
6 and do things that are unethical or illegal, that's abuse of
7 power.

8 Or abuse could be also if a company is trying to take
9 advantage of a process by not following it or circumventing it
10 somehow, that could be abuse as well.

11 **Q.** And in the normal practice, is it your expectation that
12 bidders on a project are going to share their bids with each
13 other?

14 **A.** No.

15 **Q.** Why not?

16 **A.** They would be sharing information when they are trying to
17 be competitors, it would be, first, illogical to do that when
18 you're trying to win an award. Companies work really hard to
19 try to get business with us. So if they shared their
20 information, it would be collusion and that's illegal.

21 **Q.** Now, you mentioned circumventing the process a few moments
22 ago. Would this be an example of circumventing the process?

23 **A.** Yes, that's a good example.

24 **Q.** In the context of processing bids or proposals, are there
25 any red flags that you have been trained to look for in

1 connection with fraud, waste or abuse?

2 **A.** There are.

3 **Q.** And what are some examples of those?

4 **A.** We have been given case studies of actual prior examples
5 that were presented to contracting officers. When our internal
6 team provides the training, or even externally, they have given
7 us overviews of markers and ways to identify it.

8 One example might be if bids come in and they -- I have
9 knowledge of information that other people have shared with
10 each other before they've come in. I've seen maybe emails
11 between them. That might be one way. Yeah.

12 **Q.** And in your time at the lab, are you aware of any
13 employees in your job who have encountered a real life example
14 of this?

15 **A.** Yes. Our policy lead has been in federal contracts and
16 government audit for over 45 years, and he has some examples
17 that he's run across.

18 **Q.** And now when a contractor submits a bid on a project, can
19 the contractor decide after submitting the bid that the bid was
20 incorrect and should be higher?

21 **A.** They can.

22 **Q.** And what's the process for that?

23 **A.** If they did that, they would essentially be revising the
24 bid they proposed and they would need to let us know right
25 away.

1 I -- depending on what happens, if they try to increase
2 their price, I could go to the surety, which would have a bid
3 bond, and ask for them to cover the expense of even having to
4 re-procure.

5 If they tried to revise their price after bid was
6 submitted, I would have some serious questions about why
7 they're do that. Because usually the bid they present is the
8 bid they present and it's final.

9 If there are clarifications that -- if there are
10 clarifications that change that price, I would want to know
11 why.

12 **Q.** And if there is a justification for a bid to be changed,
13 has the Department of Energy relied on a bid once it's accepted
14 a given number?

15 **A.** Can you repeat that?

16 **Q.** Sorry. That was a confusing questions.

17 When you receive a bid and you accept a bid, does the
18 department rely on that number in the process of choosing which
19 contractor to go with?

20 **A.** Yes. We definitely rely on the numbers that are presented
21 to make our selection.

22 **Q.** And you mentioned a moment ago something called a bid
23 bond. Can you explain what that is?

24 **A.** Sure. A bid bond is security from a bidder that gets an
25 insurer that says once you submit your bid, we're going to

1 cover, making sure that the contractor performs that work at
2 the price that they submitted.

3 Q. And do bids always have a bid bond or is that one of the
4 things at the discretion of the contracting officer?

5 A. It's not at the discretion. It's at a threshold. And not
6 all jobs are required to be bid bonded. If you have a small
7 job for \$50,000 or \$30,000, we don't require a bid bond.

8 Q. In your experience is it typical to ever see, once a
9 contract has been awarded, that two of the bidders on the
10 contract are collaborating on the actual construction?

11 A. No.

12 Q. Would that strike you as suspicious?

13 A. Yes.

14 Q. Why is that?

15 A. It would be very strange to have two of the bidders
16 submitting a proposal, after I have requested proposals, in
17 their response, when they submit a bid, to then show up --
18 let's say I award it to the second one, for the first one to
19 also be working with them.

20 Usually they are competitors and competition inherently
21 means that they are trying to get the business separate of each
22 other, not together.

23 Q. Does the Department of Energy take any steps to ensure
24 that the Lawrence Berkeley Lab is complying with the FAR and
25 the other regulations?

CROSBY - CROSS EXAMINATION / BOERSCH

1 **A.** It does.

2 **Q.** What kind of steps are those?

3 **A.** We have regular audits by internal auditors, federal
4 auditors, as well as a system assessment every five years. So
5 we have federal employees that can come either prearranged or
6 unannounced and randomly select a contract and review its
7 contents and even interview employees to see -- or even
8 internal staff, anyone they select that they want to, to try to
9 see and make sure that we followed our process. And we do have
10 very regular audits.

11 **Q.** Okay.

12 **MR. DAWSON:** Your Honor, if I may have a moment?

13 (Discussion held off the record between government
14 counsel.)

15 **MR. DAWSON:** Nothing further, your Honor.

16 **THE COURT:** Cross?

17 **MS. BOERSCH:** Yes. Thank you very much.

18 **CROSS EXAMINATION**

19 **BY MS. BOERSCH**

20 **Q.** Good morning, Ms. Crosby. My name is Martha Boersch and I
21 represent Lance Turner, who is over there in the lighter
22 colored suit and the purple tie.

23 As I understand it, you are employed by the regents of the
24 University of California; correct?

25 **A.** I am.

1 Q. And you're not an employee of the United States Department
2 of Energy?

3 A. No, I'm not.

4 Q. With respect to this contract that was discussed, the
5 proposed renovation of Building 84, had it been renovated, as I
6 understand it, the University of California, rather than the
7 Department of Energy, would have handled the procurement and
8 management of any such renovation contract; correct?

9 A. Typically, yes.

10 Q. Okay. And the procurement process that you follow is a
11 process that was written by the University of California;
12 correct?

13 A. It is.

14 Q. And is it correct also that for a fixed price construction
15 contract of under \$15 million, the University of California on
16 its own, not the Department of Energy, would be able to approve
17 any such contract under 15 million for a fixed price contract?

18 A. The current level is 10 million. But based on the date of
19 this document, yes, it would have been 15 million.

20 Q. In 2012, 2013?

21 A. Yes.

22 Q. And that's a delegation of authority from the Department
23 of Energy to U.C. Berkeley in the prime contract, Contract 31?

24 A. That's correct.

25 Q. Okay. Now, when U.C. Berkeley enters a contract under

1 that level, I take it that the contract itself is a contract
2 between the University of California Berkeley and a contractor?

3 A. That's correct.

4 Q. And the contractor with whom you enter the contract in
5 this context would be the prime contractor for that job?

6 A. Yes.

7 Q. And I know it's confusing because you guys are also a
8 prime contractor.

9 A. We are.

10 Q. But whoever comes in to, say, renovate a building, that
11 contractor would be a prime contractor?

12 A. That's correct.

13 Q. I want to just discuss a little bit about the standard bid
14 process that U.C. follows when awarding a contract. That
15 process is led, as you said, by a member of the procurement
16 team at the University of California, someone on your team?

17 A. That's correct.

18 Q. Okay. And typically what happens is the contract is
19 advertised; is that right?

20 A. No, not necessarily. Because we follow Federal
21 Acquisition Regulations, not State of California regulations,
22 we actually are not required to advertise a project. We can
23 reach out directly to companies to solicit bids or we can
24 advertise it, too. It's really up to us.

25 Q. Okay. So either way, at some point you solicit bids. You

1 go out publicly and try to get contractors interested; right?

2 **A.** Yes, that's correct.

3 **Q.** Either advertising or going to contractors you know. And
4 do you have a set of contractors who you typically work with
5 repeatedly?

6 **A.** We do. Usually we will issue leveraged agreements, like a
7 master agreement, to them. Those are a regular set of
8 suppliers that are pre-qualified that we know have good safety
9 records, insurance qualifications, things like that.

10 And there could be other companies that we do regularly
11 engage with. We always try to find new companies because
12 bidders are very interested in doing work for us. So we'll,
13 you know, cast that net pretty wide.

14 **Q.** Okay. But you -- you have over time developed
15 relationships with certain contractors; right?

16 **A.** Yes.

17 **Q.** Okay. There is nothing improper about that, about having
18 a relationship with a contractor?

19 **A.** No. It's encouraged because you have a pool that you know
20 is qualified.

21 **Q.** Okay. To go back to the process. After you have either
22 advertised or solicited people for a particular job, then do I
23 understand correctly that you would then send to those people,
24 those interested contractors, the prequalification form that we
25 saw an example of?

CROSBY - CROSS EXAMINATION / BOERSCH

1 A. We can on occasion, yes.

2 Q. And if you on occasion, on what occasions would you do
3 that?

4 A. Let's say, we're dealing with a new company that we don't
5 have as much experience with. We would send them the
6 pre-qualifications to see if they have the safety record,
7 insurance coverage, relevant experience, things of that nature.

8 Q. And any interested contractor can submit, if they have it,
9 the prequalification form?

10 A. Sure. Absolutely. Sometimes that happens. We'll send it
11 to a couple of companies and they will send to it someone --
12 they might not have the capacity and they will tell us: I'm
13 not going to bid on this project, I'm busy, but some other
14 company might be interested. And we get those unsolicited
15 sometimes.

16 Q. Okay. And once these -- and I can never say this without
17 stumbling over it. One the prequalification forms are provided
18 to you, I take it your team would then vet those contractors to
19 see if they are, in fact, responsible bidders?

20 A. Correct, we do.

21 Q. Okay. And that -- that vetting process that's used by
22 U.C. Berkeley, one of the reasons you do that is try to prevent
23 fraud and ensure that all the bidders are, in fact, responsible
24 potential bidders?

25 A. That's correct.

CROSBY - CROSS EXAMINATION / BOERSCH

1 Q. Okay. And that prequalification form would be submitted
2 to you typically without a bid or regardless of whether there
3 is an actual bid; right?

4 A. It can be. Usually we tie it to some bid or work because
5 it's an effort for -- it takes time for people to submit those
6 things, so we try to tie it to actual projects.

7 Q. Okay. But in your normal process, you wouldn't accept a
8 bid from any contractor until that contractor has gone through
9 the vetting process, let's say, if it's a new company?

10 A. Correct.

11 Q. And the University of California -- I think you testified,
12 that you can only enter a contract with a contractor who has
13 either a Grade A or Grade B contracting license?

14 A. We can enter into a contract with a company that doesn't
15 have a license so long as they get an active license before
16 work starts.

17 Q. So they have to have an active California contracting
18 license?

19 A. That's correct.

20 Q. Okay. After you've gone through the vetting process, I
21 think, as I understand correctly, there are usually six or
22 seven contractors who might survive that vetting process on a
23 typical job?

24 A. It can be that high, yes. Sometimes it's lower.

25 Q. Okay. And it's not until after that vetting process has

1 been completed that contractors are notified that they can
2 submit a bid; correct?

3 **A.** Well, not necessarily. Some can still submit a bid. They
4 would need to show that they still qualify with their
5 submission. We wouldn't close the door.

6 On occasion for very high dollar projects we close the
7 door. We say if you didn't make it through the first gate, you
8 haven't shown us you're qualified, you cannot submit a bid or a
9 proposal.

10 **Q.** Okay. And describe for me again, what's the difference
11 between a bid and a proposal?

12 **A.** Essentially they both ask -- they are a submission to the
13 government to win some work and win a contract.

14 The fundamental difference between a bid and a proposal is
15 usually its length and brevity. Bids are pretty brief and they
16 are usually a bottom line price.

17 A proposal usually has the means and methods or maybe more
18 detail because it's usually in response to a request for a
19 proposal that says: Here is how I plan to do the work and here
20 is my price.

21 **Q.** Okay. And Berkeley's process for letting out contracts
22 requires a written bid, a written bidding process; correct?

23 **A.** For anything over \$150,000, yes.

24 **Q.** Okay. And I take it prior to 2013 or prior to now, the
25 University of California Berkeley had never done any work with

1 Turner Group Construction?

2 **A.** Not that I'm aware of.

3 **Q.** Is it correct that in any contract that the University of
4 California would enter with a contractor, one of these under
5 15 million in 2013 or now under 10, that when that contract is
6 entered, there is a provision in the contract that states
7 that -- that any contract -- it would be a subcontract for you.

8 "Any subcontract in the name of the contractor"
9 -- that's you -- "shall not bind or purport to bind
10 the government."

11 **A.** I honestly don't know.

12 **Q.** Are you familiar with a section of the prime contract
13 called Attachment J in Appendix G?

14 **A.** I usually work with Attachment I and so I'm not as
15 familiar with J.

16 **Q.** Okay. Do you recall providing a document called
17 Attachment J, Appendix G to the Government?

18 **A.** No.

19 **Q.** You don't recall sending an email to them providing them
20 with a copy of that?

21 **THE COURT:** Why don't you show it to the witness?

22 **MS. BOERSCH:** I will. Thank you.

23 **BY MS. BOERSCH**

24 **Q.** Let me show you the copy.

25 (Whereupon document was tendered to the witness.)

1 Q. Do you recognize that?

2 A. Yes. It's Attachment J, Appendix G, Purchasing System
3 Requirements for Contract 31.

4 Q. You've seen that document before?

5 A. It's got a reference to appendix clause I, which is the
6 contractor purchasing system.

7 No. I don't really recognize this document, but clause I
8 and the purchasing system reference I recognize, because that's
9 usually where we get our authority, and, also, the rules.

10 Q. So I know you don't recognize this specific document, but
11 if you'd look at the section called Subcontracts Not Binding on
12 DOE, and the second paragraph. Have you ever seen that
13 language before?

14 A. I have seen this language before.

15 Q. And what is your understanding of that language?

16 A. At times the federal government, when they approve some of
17 our contracts that we -- so when they are above a certain
18 threshold. So we have a bunch of different thresholds. In
19 2012 and '13 it was 15 million for construction contracts.

20 If we sent them for approval, the approval would come back
21 at times with this language in it that says it's applicable to
22 subcontracts made by the contractor, which would be U.C.,
23 and -- yeah, and so forth.

24 Q. Okay. And would that language sometimes come back in
25 contracts as to which U.C. Berkeley has the authority to

CROSBY - CROSS EXAMINATION / RIORDAN

1 approve, i.e., the ones under 15 million?

2 A. Yes.

3 Q. Okay. Let me take that back from you.

4 A. Sure.

5 (Whereupon document was returned to counsel.)

6 Q. Okay. I have nothing further at this time.

7 THE COURT: Mr. Riordan.

8 CROSS EXAMINATION

9 BY MR. RIORDAN

10 Q. Good morning, Ms. Crosby. My name is Dennis Riordan. I
11 represent Len Turner.

12 I believe you testified that if you didn't have a going
13 relationship with a contractor, let's say they were applying
14 for a job or a project for the first time, they would
15 definitely have to fill out the screening questionnaire that
16 you were shown before?

17 A. Typically, yes.

18 Q. And the information on that, if you didn't have a
19 relationship, would be very, very important to you?

20 A. It's very important, yes.

21 Q. And every question on it is very important; right?

22 A. Yes, it is.

23 Q. The question about experience modification, you've just
24 spoken to; right?

25 A. Yes.

1 Q. Whether there has been OSHA violations, so forth? The
2 question you just discussed about whether they have a
3 contractor's license and what time would be -- what kind would
4 be very important to you?

5 A. Yes, it would.

6 Q. Question nine on here is:

7 "Provide at least three references of companies,
8 agencies you have performed work for in the last two
9 years. Information requested for each."

10 That's a very important question, right?

11 A. It is.

12 Q. And if you were to get a form in which somebody was unable
13 to provide any references because they hadn't done any
14 contracting work in the last two years, they would be very
15 unlikely to get any further consideration from you; right?

16 A. Not for any project of any significance. We do have new
17 companies that we might give very small projects to that we can
18 then test them and give them jobs and opportunities. But for
19 anything of any significance, no.

20 Q. And a \$6 million contract is a contract of significance?

21 A. Yes. Any \$1 million or more contract we consider
22 significant, absolutely.

23 Q. And I think you looked at what's been marked Exhibit 45,
24 which is the submission -- it may be in front of you -- from
25 the Turner Group that was up on your screen before?

CROSBY - CROSS EXAMINATION / RIORDAN

1 A. Yes.

2 Q. And that's a very short form; right? Two or three pages?

3 A. It is.

4 Q. And it says "Proposal" on it, right?

5 A. Yes.

6 Q. Okay. And it has a figure of \$6.1 million or something to
7 that effect; right?

8 A. Yes, it does.

9 Q. And other than that, it provides very little information
10 about how they would do this job; right?

11 A. Uh-huh. That's correct.

12 Q. And if you were in any way interested in any bid that --
13 proposal that came in like this, with this amount of
14 information, you would want to follow up and get more
15 information on how exactly they were going to do this?

16 A. Well, I would want to check things like their references,
17 as well as their relevant experience. And we have the
18 discretion also to interview project teams if we want to.

19 So, yes, I could -- and my team and I could do all of
20 those things.

21 Q. Because your concern in the bidding process is not to find
22 somebody who submits the lowest bid; right?

23 A. That's correct.

24 Q. You need the lowest bid that is consistent with that job
25 getting done completely, consistently with what you need;

1 right?

2 **A.** Well, we don't always want the lowest bid, but we
3 definitely want a reasonable price to do the job. Sometimes
4 the lowest bid is a little frightening.

5 So, yes, we want the best qualified company that can
6 absolutely do the job safely, adhering to our policies, making
7 sure their laborers are paid a minimum wage. There are a lot
8 of federal requirements.

9 We want a company that can really do the work and make
10 sure the building that they leave us with is going to last and
11 not need rework once they are gone.

12 **Q.** Right. And so if the only information you had was this
13 information, at a minimum you would be following up to find out
14 more about this company and their ability to do the job; right?

15 **A.** Most likely, yes. If I hadn't done that work beforehand.

16 **Q.** And you discussed the fact that not infrequently you may
17 get a company that you might be interested in and bring them in
18 on a project, but you're going to wind up negotiating with them
19 about their numbers; right?

20 **A.** Not -- on occasion, yes, yes.

21 **Q.** Okay. Nothing further.

22 **A.** Thank you.

23 **THE COURT:** Mr. Dawson?

24 **MR. DAWSON:** Thank you, your Honor.

CROSBY - REDIRECT EXAMINATION / DAWSON

REDIRECT EXAMINATION

BY MR. DAWSON

Q. Ms. Crosby, Ms. Boersch asked some questions about the contracts that are ultimately entered into and that the signatories would be U.C. Berkeley and the contractor; is that correct?

A. Yes.

Q. Does that also incorporate the relationship between U.C. Berkeley and the Department of Energy?

A. Yes.

Q. And what -- how do the contracts do that? How do they incorporate the Department of Energy?

A. So all of our contracts, the very first thing that they list is the scope. We're hiring you to come and renovate or build some building.

Always the second paragraph states the terms and conditions of this contract between the regents and you, company, are subject to the terms and conditions of prime Contract 31.

Q. So in those contexts is U.C. Berkeley operating effectively as the agent of the Department of Energy in entering into these contracts?

A. Yes.

Q. And in terms of the procurement process and how exactly your team runs the process, you testified about the FAR

CROSBY - REDIRECT EXAMINATION / DAWSON

1 earlier. Is the FAR incorporated into how you run the process?

2 **A.** It is.

3 **Q.** And the FAR comes from the federal government; isn't that
4 right?

5 **A.** Yes.

6 **Q.** Does U.C. Berkeley have discretion to do its own process
7 that would be inconsistent with the FAR when operating at the
8 Lawrence Berkeley Labs?

9 **A.** No, not at all. In fact, we're held accountable to comply
10 with the FAR.

11 **Q.** And do the audits that you referenced earlier address
12 questions like that, whether you're complying with the FAR?

13 **A.** They do. When the auditors come and look at our systems,
14 they assess us directly against those criteria. And when we
15 don't comply, we have corrective actions to change our
16 processes to make sure we comply.

17 **Q.** What kind of corrective actions would those look like?

18 **A.** For example, many years ago we had really not very strong
19 practices to make sure that laborers on a job are paid a
20 minimum wage. So the federal government wants to make sure it
21 protects labor.

22 So for any job in construction, \$2,000 or more, every
23 single laborer on the job has to make a minimum wage. And
24 that's set by the Department of Labor. And there are a lot of
25 processes to protect that.

1 So we're supposed to conduct interviews with the laborers.
2 My team and I will, you know, put on safety hat and boots and
3 go out to the job site unannounced and interview people to see
4 how much do you make and then check it against the base pay.
5 And we weren't doing that as regularly as we could.

6 So when we had a system check, I think it was four or five
7 years ago, the Department of Labor told us -- because they can
8 come and audit us too, and they do -- you're really not doing
9 this very well and we are not sure if labor is actually paid a
10 minimum wage on construction projects. A company can't make
11 money on the backs of labor.

12 So we strengthened those processes, so I put in a regular
13 schedule for my team to go out in the field and do regular
14 construction checks monthly.

15 So that's one example of how we must comply with the
16 Federal Acquisition Regulation.

17 **Q.** And you were explaining to Ms. Boersch as well about the
18 thresholds at which your team is authorized to bind or commit
19 to a contract. Can you remind the jury and me what those
20 thresholds are?

21 **A.** Sure. Each of us, and as contracting officers and buyers,
22 have a threshold. So when you're a junior, you might be able
23 to sign a contract at \$25,000. My limit is \$3 million, for
24 example. The laboratory itself has a \$10 million threshold.

25 So we can usually sign contracts below \$10 million without

1 further review or approval. When they are above that
2 threshold, they go to the contracting officer, who is the DOE
3 CO, and that person then has to review the contract, but we
4 still always sign those contracts. The U.C. regents still sign
5 those contracts.

6 **Q.** And the -- those thresholds, does the Department of Energy
7 have a say in where those thresholds are and how that process
8 is run?

9 **A.** Yes. They have sole discretion on what that is.

10 **Q.** So the limits you mentioned, are they set by the prime
11 contract or by some other process?

12 **A.** They are actually set by the contracting officer. So they
13 could reduce it to zero and take our authority away if they so
14 elected.

15 **Q.** When you say "they," that's the Department of Energy?

16 **A.** Yes, Department of Energy contracting officer.

17 **Q.** So the thresholds that your team operates within are
18 delegated by the Department of Energy?

19 **A.** Yes.

20 **Q.** And then when a project like that were to proceed, one
21 that's within that delegated range, who ultimately pays for
22 that project to be completed?

23 **A.** Department of Energy pays for the completion of projects.

24 **Q.** So the funding source doesn't change, whether or not it's
25 within the threshold or if it's something that's above the

CROSBY - REDIRECT EXAMINATION / DAWSON

1 threshold?

2 **A.** Correct. The signatory doesn't change either. So above
3 or below we still sign. Above or below they fund it.

4 **Q.** Okay. And in terms of the qualifications that would be
5 necessary for a contractor, am I correct that the license --
6 you referred to the contractor's license. That the entity need
7 not have a license at the time of the bid, but must have one by
8 the time the job were to begin --

9 **A.** Yes.

10 **Q.** -- is that right?

11 **A.** That's correct.

12 **Q.** I believe we addressed some of this in direct, but I
13 wanted to follow up after cross to make sure I'm understanding
14 correctly.

15 The bid letter -- I know we have been looking at
16 Exhibit 45. But more generally, when you get a bid that has
17 information in it, the contracting officer can decide in
18 advance what kind of information they want to be included with
19 the bid?

20 **A.** That's correct.

21 **Q.** And so does that fall within the discretion each
22 contracting officer has about how they are going to proceed on
23 a given project?

24 **A.** It does. So the contracting officer can't waive minimum
25 things that are required in the FAR, the Federal Acquisition

1 Regulation. So what I mentioned about labor and pay, they
2 can't waive that, or licensing.

3 But they can have discretion about what they ask for. How
4 many years of relevant experience, whether it's two, three or
5 five years of relevant experience, that's something that the
6 contracting officer has discretion about.

7 There are a lot of other detailed things like that. So in
8 the request, when you're asking people, Here is a request for
9 you to give me a proposal, they can list what they want. And
10 then when you're submitting that proposal, a company says,
11 Okay, now here is my proposal in response to your request, they
12 need to respond to what we asked for.

13 **Q.** And in the context where the response addresses everything
14 that was asked for, the contracting officer had a list and the
15 bid and the prequalification has everything that would be
16 required, would the contracting officer have to follow up and
17 do more work or could they simply accept the bid if it
18 satisfied the requirements?

19 **A.** They could accept the bid if it satisfied the requirements
20 and then demand performance. I mean, if you signed the
21 contract and they start, you would demand performance, yes.

22 **Q.** What do you mean by "demand performance"?

23 **A.** You promised now to do the job at a certain amount. You
24 need to show up and do it after you have been awarded a
25 contract. And if you don't, then I go to your insurance

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1 company and ask them to cover to make sure that it's finished.

2 So it deters people from wasting my time or their time
3 and, also, taking business away from other companies that
4 really want that business. So that's what I mean about
5 ensuring performance, you need to show up and finish the
6 project at the price you quoted.

7 **MR. DAWSON:** If I could have a moment, your Honor?
8 (Discussion held off the record between government
9 counsel.)

10 **MR. DAWSON:** Nothing further.

11 **MR. RIORDAN:** Very briefly.

12 **RECROSS EXAMINATION**

13 **BY MR. RIORDAN**

14 **Q.** Ms. Crosby, a company bidding for a project can get burned
15 if they sign a contract for a number that proves to be less
16 than what they needed to do the job; right?

17 **A.** They can.

18 **Q.** So a responsible contractor is concerned about having
19 enough information to submit a bid that he or she can live
20 with; right?

21 **A.** Absolutely.

22 **Q.** And one of the things that any responsible contractor
23 wants to get from Berkeley, for instance, if they are going to
24 submit a bid, is specs and scope; right?

25 **A.** Yes. Absolutely.

1 Q. Thank you.

2 THE COURT: Anything further?

3 (No response.)

4 THE COURT: Hello?

5 MR. DAWSON: Sorry.

6 THE COURT: Anything further?

7 MR. DAWSON: Nothing further, your Honor.

8 THE COURT: I have some questions.

9 In the typical situation -- not this, but in a typical
10 situation -- I mean, I don't know whether this is typical or
11 not. I don't want to comment on this. I want to ask you about
12 the typical situation.

13 In your experience, let's say you want to develop,
14 renovate, whatever it is, a building. All right. So you send
15 out something called a request -- first of all, you have done
16 some plans and specifications; is that correct?

17 THE WITNESS: Typically, yes.

18 THE COURT: Typically, the typical situation. You
19 prepare plans and specifications.

20 You've also had a discussion with the people in your
21 office as to what appears to be a reasonable price for the
22 renovation. We'll call it renovation, project.

23 THE WITNESS: That's our independent estimate, yes.

24 THE COURT: Okay. And if the project is -- comes
25 back, these estimators come back and they say X, it should cost

1 X, X is either within your budget or not within your budget.

2 **THE WITNESS:** Correct.

3 **THE COURT:** If it's within your budget, you want to
4 proceed, perhaps, if there are other reasons to proceed, but if
5 it's outside of your budget, you're probably not going to
6 proceed.

7 **THE WITNESS:** Right, or you --

8 **THE COURT:** Without value engineering, without doing
9 some things to it.

10 **THE WITNESS:** Yes.

11 **THE COURT:** Okay. So that's the typical case.

12 Now, let's say you've done all that. And what you want to
13 do now is to see, is there somebody out there who can build it.
14 That would be the next step; right?

15 **THE WITNESS:** That's correct.

16 **THE COURT:** So you send out either this thing called
17 Invitation To Bid or Request for Proposal, and one is more
18 detailed than the other. What do you say in either of those
19 documents as to the scope of the work? What do you say?

20 You say to a contractor: Would you like to bid on
21 Project X. Project X. What is Project X? So what do you say
22 in the typical situation?

23 **THE WITNESS:** So typically we list the general scope.
24 Renovation to building, for example. And we provide plans or
25 any specifications that we might want. And then say give us a

1 proposal based on those things and tell us what you would
2 charge us to do that work within this time frame.

3 **THE COURT:** So it is your expectation, or is it, that
4 somebody who does then respond to it has actually seen the
5 plans and specifications?

6 **THE WITNESS:** Correct. Yes.

7 **THE COURT:** And is it your experience that that
8 information is actually necessary for a person to make a bid?

9 **THE WITNESS:** It is necessary typically. The times
10 it's not is when we're really early and all we're thinking
11 about is a concept.

12 So, for example, at the Richmond site there aren't
13 buildings there. We were thinking about development, so we
14 asked for conceptual ideas. And then the potential price,
15 because those aren't -- they don't exist yet.

16 So those are -- that's the outlier. Typically you've got
17 plans and specs and you get a bid. You get a hard bid. You
18 know, a price that tells you: Here is what I would charge you
19 to do that work.

20 **THE COURT:** So dividing it into two categories.

21 **THE WITNESS:** Yes.

22 **THE COURT:** And taking the first one first, that is
23 the undeveloped property.

24 **THE WITNESS:** Right.

25 **THE COURT:** You may not have plans and specifications

1 for an developed property.

2 **THE WITNESS:** Correct.

3 **THE COURT:** But in terms of a renovation, you would
4 have plans and specifications as a general rule.

5 **THE WITNESS:** Yes.

6 **THE COURT:** And what you want with respect to an
7 undeveloped property is you would still describe, would you
8 not, in your Request for Proposal, request for a bid, you would
9 say to build six buildings of so many square feet in compliance
10 with such-and-such.

11 **THE WITNESS:** Correct.

12 **THE COURT:** You have to tell them something --

13 **THE WITNESS:** Oh, sure.

14 **THE COURT:** -- not build six buildings, wouldn't you?

15 **THE WITNESS:** Right. It would be very different.
16 Imagine if you're building an amusement park or, you know, a
17 shopping -- like a Walmart or a Home Depot. Very different
18 things. You'd have to say: I want an amusement park or I want
19 this other building, and tell me what the price would be for
20 each of those things.

21 **THE COURT:** Thanks very much.

22 **THE WITNESS:** Sure.

23 **THE COURT:** Do the parties have any questions?

24 (No response.)

25 **THE COURT:** Ladies and gentlemen, you should not take

1 anything of what I say or do as indicating what I think of the
2 evidence. My purpose in asking questions is just to make sure
3 the testimony is as clear as it could be, at least from my
4 point of view. I try to do it to assist the jury, but when I
5 but when I have a question, I sometimes ask it because I want
6 to make sure it's clear in my mind.

7 But it is your determination solely whether to accept a
8 witness's testimony or reject a witness's testimony. That
9 simply is up to the jury and it's not up to the Court.

10 Okay. Anything further?

11 **MR. RIORDAN:** No, your Honor.

12 **MR. DAWSON:** Nothing from the Government.

13 **THE COURT:** Thank you very much, Ms. Crosby.
14 Appreciate it.

15 (Witness excused.)

16 **THE COURT:** well, Let's see. Five to 12:00. A very
17 good time to take a recess. We will recess, keeping with my
18 strict standards, to five to 1:00. See you back here then.

19 Remember my admonition. Don't discuss the case, allow
20 anyone to discuss it with you, form or express my opinion.

21 Thank you very much. You may retire.

22 (Jury exits the courtroom at 11:56 a.m.)

23 **THE COURT:** Okay. The jury has retired. So who is
24 next in the panoply of witnesses?

25 **MS. HOPKINS:** The Government is going to call William

PROCEEDINGS

1 Myles, your Honor.

2 **THE COURT:** So I assume there will be some playing of
3 a tape recording then, or not?

4 **MS. HOPKINS:** Yes. Recordings.

5 **THE COURT:** Okay. I don't think I have any other
6 questions. Thank you.

7 (Whereupon at 11:57 a.m. proceedings
8 were adjourned for noon recess.)

9 (Further proceedings held herein, reported
10 but not transcribed.)

11 * * * * *

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Wednesday, August 22, 2018